

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the Telecommunications	)	
Act of 1996	)	
	)	
Southern Public Communication	)	
Association, Petition for a Declaratory	)	
Ruling Regarding the Remedies	)	
Available for Violations of the	)	
Commission's Payphone Orders	)	
_____	)	

**COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL  
ON THE SOUTHERN PUBLIC COMMUNICATION ASSOCIATION'S  
PETITION FOR DECLARATORY RULING**

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*Attorneys for the American Public  
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December 10, 2004

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
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AMERICAN PUBLIC COMMUNICATIONS COUNCIL  
ON THE SOUTHERN PUBLIC COMMUNICATION ASSOCIATION'S  
PETITION FOR DECLARATORY RULING**

The American Public Communications Council ("APCC") hereby supports the Southern Public Communication Association's ("SPCA's") request for a declaratory ruling that its members and payphone service providers ("PSPs") generally are entitled to refunds, back to April 15, 1997, of charges assessed by Bell Operating Companies ("BOCs") for local exchange services used by PSPs, to the extent that such charges exceed those that would have been collected had the rates complied with the FCC's new services test standard.<sup>1</sup>

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<sup>1</sup> Southern Public Communication Association Petition for a Declaratory Ruling, filed November 9, 2004 ("SPCA Petition").

The fundamental issue raised by SPCA's petition is the same as that raised by the petition of the Illinois Public Telecommunications Association ("IPTA"), on which APCC previously filed comments.<sup>2</sup> We will not repeat all the arguments in APCC's IPTA Comments, which are in large part also applicable to SPCA's petition, and which have been incorporated by reference in SPCA's petition. SPCA Petition at 14.

As explained in APCC's IPTA Comments, a Commission ruling on this matter is urgently needed to end regulatory uncertainty<sup>3</sup> and to redress longstanding inequity to PSPs and their customers. The BOCs have exploited the Commission's processes by first agreeing to bring their payphone line rates into compliance with the new services test so that their payphones become eligible to receive dial-around compensation, and then delaying compliance as long as possible by obstinately maintaining, even in the face of clearcut FCC guidance, that their rates complied with the new services test. The BOCs even challenged this Commission's jurisdiction to order the BOCs to comply with the new services test, even though the BOCs had promised to do just that three years earlier.

As a result, the BOCs have reaped huge economic gains to which they were not entitled, and have unfairly deprived PSPs and their customers of the benefits of cost-

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<sup>2</sup> See Public Notice, DA 04-2487 (rel. August 6, 2004); Comments of the American Public Communications Council on the Illinois Public Telecommunications Association's Petition for Declaratory Ruling at 1 n. 1 (filed August 26, 2004) ("APCC's IPTA Comments").

<sup>3</sup> See *Vonage Holdings Corporation, Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Dkt. No. 03-211, FCC 04-267 ¶14 n. 46 (rel. November 12, 2004) (finding it "essential that we take action to bring some greater measure of certainty to the industry [and] to enable this Commission and the states . . . to address the numerous other unresolved issues").

based rates, to which PSPs *were* entitled. Allowing the BOCs to keep the excess payphone line charges in the face of their promise to refund those charges would undermine the integrity of the Commission's processes and reward the BOCs for their persistent refusal to comply with the *Payphone Orders*. Requiring refunds, on the other hand, will defend the integrity of the Commission's processes, make PSPs whole for their losses, and promote the widespread payphone deployment mandate of the Telecommunications Act.

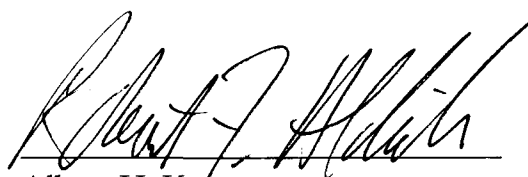
There can be no dispute that the *Payphone Orders* required the BOCs to comply with the new services test in order to be eligible to collect dial-around compensation beginning April 15, 1997, and that the BOCs failed to timely comply with the new services test in Mississippi as well as numerous other states. The logical and legal remedy for these violations of law is to require the BOCs to refund all charges they have collected since April 15, 1997 in excess of new-services-test-compliant rates. A refund of payphone line charges is clearly preferable to the only alternative – requiring the BOCs to disgorge all dial-around compensation collected while the BOCs were ineligible.

## CONCLUSION

For the foregoing reasons, the Commission should grant SPCA's petition for a declaratory ruling and rule that BOCs must provide refunds back to April 15, 1997 for all payphone line charges collected from PSPs in excess of new-services-test-compliant rates.

Dated: December 10, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

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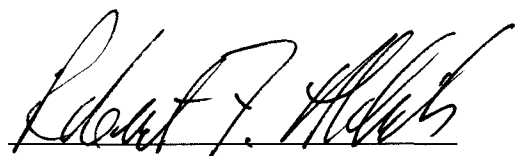
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## CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2004, the foregoing Comments of the American Public Communications Council on The Southern Public Communications Association's Petition for Declaratory Ruling was delivered via first-class U.S. Mail, postage pre-paid to the following:

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A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Robert F. Aldrich